

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

: CRIMINAL

NO. _____

v.

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HOWARD DALL, R.PH.

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DATE FILED: _____

VIOLATIONS: 18 U.S.C. § 371

**(conspiracy to commit health care fraud- 1
count)**

21 U.S.C. §§ 331(t), 333(b)(1)(B), and 353(c)

**(illegal sale of prescription drug samples - 1
count)**

Notice of forfeiture

Notice of additional factors

INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

At times material to this information:

DRUG SAMPLES

1. The term "drug sample" means a unit of a prescription drug which is not intended to be sold and is intended to promote the sale of the drug. 21 U.S.C. §353(c).

2. Under the Prescription Drug Marketing Act ("PDMA"), 21 U.S.C. §353(d), a manufacturer or distributor of a prescription drug may distribute prescription drug samples without charge to a licensed practitioner, or to the pharmacy of a hospital, or another health care entity at the request of a licensed practitioner. Prescription drug samples are not to be delivered to retail pharmacies for sale to consumers. Under the PDMA, no person may sell, purchase, or trade or offer to sell, purchase, or trade a drug sample. 21 U.S.C. § 353(c)(1).

3. The PDMA was enacted for several reasons, one being that "[t]he existing system of providing drug samples to physicians through manufacturer's representatives has been abused for decades and has resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals." 21 U.S.C. §353 (note).

4. Defendant HOWARD DALL is a pharmacist licensed to practice pharmacy by the Commonwealth of Pennsylvania. Defendant DALL owned Ralph's Pharmacy located at 18 East Ridge Pike, Conshohocken, PA and Gladwyne Pharmacy located at 352 Righters Mill Road, Conshohocken, PA.

5. Defendant HOWARD DALL dispensed drug samples to patients and then billed the patients' health insurance plans and third-party payers for reimbursement, or received cash, for those drug samples.

6. From on or about January 1998 to on or about June, 2001, in the Eastern District of Pennsylvania, defendant

HOWARD DALL

conspired and agreed with others known and unknown to the United States Attorney to commit an offense against the United States, that is, to knowingly and willfully execute a scheme to defraud health care benefit programs, that is AdvancePCS and other third-party payers of prescription drug benefits, and to obtain money and property owned by and under the custody and control of those health care benefit programs, by means of false and fraudulent pretenses, representations, and promises, in connection with the delivery of and payment for health care benefits, items and services, by submitting or causing to be submitted claims for prescription

drug samples knowing that prescription drug samples were not to be dispensed and billed to third-party payers, in violation of 18 U.S.C. § 1347.

MANNER AND MEANS

It was part of the conspiracy that:

7. Defendant HOWARD DALL approached physicians, pharmaceutical manufacturers' representatives, and other pharmacists to buy, sell, and trade prescription drug samples, including samples that were near their expiration dates. Defendant DALL paid the physicians, drug representatives, and other suppliers in cash.

8. Once defendant HOWARD DALL obtained the prescription drug samples from the various suppliers, the samples were "punched out," that is, removed them from their unique individualized packaging, and were then placed into unmarked baggies for distribution.

9. Defendant HOWARD DALL bought and sold prescription drug samples to
and from other pharmacists known and unknown to the United States Attorney. The purchase price was well below the amount that defendant DALL would have paid for the prescription drugs through the lawful wholesale distribution network.

10. Defendant HOWARD DALL placed the illegally obtained prescription drug samples into his pharmacies' inventory, and dispensed the drug samples to unsuspecting patients.

11. Defendant HOWARD DALL billed various third-party payers and insurance companies for dispensing the prescription drug samples to patients, knowing that it was illegal to bill for these drug samples.

OVERT ACTS

In furtherance of the conspiracy, the defendant and others known and unknown to the United States Attorney committed the following overt acts in the Eastern District of Pennsylvania:

12. From in or about January 2000 through June 2000, defendant HOWARD DALL purchased approximately 15,000 Prilosec from a pharmaceutical drug manufacturer's representative.

13. From in or about January 2000 through June 2000, defendant HOWARD DALL "punched out" the samples and placed them into the inventory at his various pharmacies.

14. From in or about January 2000 through June 2000, defendant HOWARD DALL dispensed Prilosec drug samples to patients, and billed and received payment from various third-party payers for these drug samples.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. The allegations in paragraphs 1 through 5 in Count One are incorporated here.

2. From January 1998 to June 2001, defendant HOWARD DALL purchased tens of thousands of prescription drug samples from physicians, pharmacists and various drug manufacturers' representatives on a regular basis. These prescription drug samples included, but were not limited to, Prilosec, Ambien, a Schedule IV controlled substance, Celebrex, Paxil, Prozac, Zocor, Avandia and Zyrtec.

3. Defendant HOWARD DALL sold, or caused to be sold, tens of thousands of prescription drug samples, including controlled and non-controlled substances. The drug samples were sold to other pharmacists or placed into the inventory of defendant DALL's pharmacies and sold to patients.

4. On or about April 17, 2001, in the Eastern District of Pennsylvania, defendant

HOWARD DALL

knowingly and unlawfully purchased, traded, sold, and offered to purchase, trade and sell, prescription drug samples.

In violation of Title 21, United States Code, Sections 331(t), 333(b)(1)(B), and 353(c)(1).

NOTICE OF ADDITIONAL FACTORS

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. In committing the offenses charged in Counts One and Two of this information, defendant HOWARD DALL:

a. Committed an offense in which the defendant abused a position of public and private trust, as described in U.S.S.G. §3B1.3.

b. Committed an offense in which the defendant used a special skill, in a manner that significantly facilitated the commission and concealment of the offense, as described in U.S.S.G. § 3B1.3.

c. Committed an offense in which the offense involved fraud and the loss exceeded \$200,000, as described in U.S.S.G. § 2F1.1(b)(1).

d. Committed an offense that involved more than minimal planning and/or the scheme involved more than one victim, as described in U.S.S.G. § 2F1.1(b)(2).

NOTICE OF FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 371 and 1347, set forth in this information, defendant

HOWARD DALL

shall forfeit to the United States of America any property that constitutes or is derived from gross proceeds traceable to the commission of such offenses, as charged in this information, including, but not limited to, the sum of \$ 100,000.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court; or
- (d) has been substantially diminished in value;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 982(a)(7).

PATRICK L. MEEHAN
UNITED STATES ATTORNEY

